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11 Attorneys for Plaintiff, William L.
12 Grivas, Sr.

13 **IN THE UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 WILLIAM L. GRIVAS, Sr., On Behalf of
16 Himself and All Others Similarly Situated,

17 Plaintiff,

18 v.

19 METAGENICS, INC.,
20

21 Defendant.
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CASE NO. 15-cv-1838

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW,
BUSINESS & PROFESSIONS CODE
SECTIONS 17200, ET SEQ.**

DEMAND FOR JURY TRIAL

1 Plaintiff William L. Grivas, Sr., by and through his attorneys, brings this
2 action on behalf of himself, and all others similarly-situated against Defendant
3 Metagenics, Inc. Plaintiff alleges, on information and belief, except for information
4 based on personal knowledge, as follows:

5 **NATURE OF THE ACTION**

6 1. Metagenics, Inc. touts itself as a “nutrigenomics” and “lifestyle
7 medicine” company that manufactures, markets, and sells a number of high-priced
8 non-prescription consumable products or foods allegedly designed to treat a number of
9 chronic health conditions. Metagenics’s tag line is “Genetic Potential Through
10 Nutrition.” A big part of Metagenics’s business is its sale of so-called “medical foods”
11 which it sells as non-prescription powdered beverages or ready-to-eat food bars.

12 2. Metagenics knows that about 84 million people in this country suffer
13 from some form of cardiovascular disease.¹ Metagenics also knows that another 29
14 million Americans have diabetes.² To capitalize on that large customer base,
15 Metagenics markets and sells its so-called “medical food” to treat and correct
16 “cardiovascular disease,” “glucose control,” “metabolic syndrome,” “compromised
17 gut function,” and a host of maladies. Metagenics falsely labels such products –
18 some of which cost \$150 or more per container – as “medical food” knowing that
19 such labeling carries a meaning to its customers and allows it to target a specific
20 market, and that such a label allows for a much higher price when compared to, for
21 example, ordinary foods or dietary “supplements.”

22 3. This strategy has worked for Metagenics. Upon information and
23 belief, Metagenics enjoyed sales of at least \$300 million in 2015. Metagenics’s
24 sales and growth were so strong that it attracted a significant investment from

25 ¹ See [http://www.hopkinsmedicine.org/healthlibrary/conditions/cardiovascular_](http://www.hopkinsmedicine.org/healthlibrary/conditions/cardiovascular_diseases/cardiovascular_disease_statistics_85,P00243/)
26 [diseases/cardiovascular_disease_statistics_85,P00243/](http://www.hopkinsmedicine.org/healthlibrary/conditions/cardiovascular_diseases/cardiovascular_disease_statistics_85,P00243/) (last accessed Sept. 18,
27 2015).

28 ² See <http://www.cdc.gov/diabetes/data/statistics/2014statisticsreport.html> (last
accessed Sept. 18, 2015).

1 Alticor, Inc., the multi-billion dollar enterprise responsible for the Amway® brand,
2 which purchased a controlling stake in Metagenics in late 2009.

3 4. These lofty sales were largely achieved however by false labeling of
4 its products as “medical food.” Metagenics’s “medical food” label is false and
5 deceptive as a matter of California law. Specifically, California’s Sherman Food,
6 Drug, and Cosmetic Law specifically defines and regulates the use of the term
7 “medical food.” Actual “medical foods” are specially formulated to be consumed
8 or administered enterally under the supervision of a physician and are intended for
9 the dietary management of a specific disease or condition. Metagenics’s products
10 labeled as “medical food” uniformly *do not, however*, meet California’s definition
11 of “medical food.” Rather, Metagenics mass-produces general, not specific, recipes
12 that it hopes to sell to as many people as possible, with or without physician
13 involvement. In short, Metagenics is deceiving people when it tells them that their
14 products are indeed specialized “medical food.”

15 5. Plaintiff William L. Grivas, Sr., a purchaser of Metagenics’s alleged
16 “medical foods,” seeks monetary recovery and to otherwise hold Metagenics
17 accountable for its continued and knowing deception. Mr. Grivas brings this case
18 on behalf of himself and all similarly-situated purchasers of Metagenics’s “medical
19 foods.”

20 **JURISDICTION AND VENUE**

21 6. This Court has original jurisdiction pursuant to 28 U.S.C.
22 § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds
23 the sum or value of \$5,000,000 and is a class action in which members of the class
24 of plaintiffs are citizens of states different from Metagenics. Further, based on
25 information and belief, greater than two-thirds of the class members reside in states
26 other than the state in which Metagenics is a citizen (California).

27 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that
28 many of the acts and transactions giving rise to this action occurred in this district

1 and because Defendant:

2 (a) is authorized to conduct business in this district and has
3 intentionally availed itself of the laws and markets within this district through the
4 promotion, marketing, distribution and sale of its products in this district;

5 (b) does substantial business in this district;

6 (c) maintains its headquarters in this district; and

7 (d) is subject to personal jurisdiction in this district.

8 **PARTIES**

9 8. At all times relevant to this matter, Plaintiff resided and continues to
10 reside in the state of California. During the class period, Plaintiff was exposed to and
11 saw Metagenics's claims by reading the Metagenics "medical food" label. Plaintiff
12 purchased Metagenics "medical food" in reliance on these claims, and suffered injury
13 in fact and lost money as a result of the unfair competition described here.

14 9. Defendant Metagenics is a global nutrigenomics and lifestyle
15 medicine company headquartered in this District in Aliso Viejo, California.
16 Defendant makes all major policy decisions, including advertising, labelling, and
17 marketing decisions, from its Orange County, California headquarters, for all sales
18 nationwide such that it can and does reasonably expect that it must comply with
19 California law in its sales nationwide.

20 **ADDITIONAL FACTUAL ALLEGATIONS**

21 **What "Medical Foods" are Supposed to Be**

22 10. According to California's Sherman Food, Drug and Cosmetic Act,
23 a "medical food" is:

24 a food which is formulated to be consumed or administered internally
25 under the supervision of a physician and which is intended for the
26 specific dietary management of a disease or condition for which
27 distinctive nutritional requirements, based on recognized scientific
28 principles, are established by medical evaluation.

1 Cal. Health & Safety Code §§ 110100 and 109971; 21 U.S.C. § 360ee(b)(3)
2 (incorporated by Section 110100).

3 11. The following criteria clarify the definition of a true medical food.
4 Specifically, a food is a medical food only if it fits the above definition and:

5 (i) It is a specially formulated and processed product (as opposed to
6 a naturally occurring foodstuff used in its natural state) for the partial
7 or exclusive feeding of a patient by means of oral intake or enteral
8 feeding by tube;

9 (ii) It is intended for the dietary management of a patient who,
10 because of therapeutic or chronic medical needs, has limited or
11 impaired capacity to ingest, digest, absorb, or metabolize ordinary
12 foodstuffs or certain nutrients, or who has other special medically
13 determined nutrient requirements, the dietary management of which
14 cannot be achieved by the modification of the normal diet alone;

15 (iii) It provides nutritional support specifically modified for the
16 management of the unique nutrient needs that result from the specific
17 disease or condition, as determined by medical evaluation;

18 (iv) It is intended to be used under medical supervision; and

19 (v) It is intended only for a patient receiving active and ongoing
20 medical supervision wherein the patient requires medical care on a
21 recurring basis for, among other things, instructions on the use of the
22 medical food.

23 Cal. Health & Safety Code § 110100; 21 C.F.R § 101.9(j)(8) (incorporated by
24 Section 110100).

25 12. Medical foods were intended, primarily, for use as a life support
26 modality in the management of the critically ill or elderly. Their definition is meant
27 to be narrowly construed.
28

Metagenics Falsely Labels Product as “Medical Foods”

13. Defendant Metagenics sells a whole line of products falsely labeled as “medical foods.” Metagenics sells at least 17 varieties of so-called “medical foods” ranging in prices of up to \$159 per container or “kit.”

14. Every one of Metagenics’s “medical foods” prominently and uniformly lists the phrase “Medical Food” on the front of every product label, as well as in marketing materials such as those found on the Metagenics website.

15. For example, the product packaging for one of Metagenics’s more popular “medical food” products, UltraMeal®, looks substantially like:



16. These products, however, do not meet California’s statutory definition of “medical food” and Metagenics’s use of that term on its product packaging and marketing materials is materially false and deceptive.

17. First, Metagenics’s “medical foods” are *not* specially formulated for a particular patient, or for a particular health condition, as true medical foods are supposed to be. Rather, Metagenics, as a matter of policy and general practice,

1 mass produces and sells its “medical foods” to anyone and these foods are made up
2 of ordinary or naturally-occurring ingredients such as soy, fructose, olive oil, and
3 riboflavin. Metagenics’s “medical foods,” in short, are ordinary mass-produced
4 foods or, at most, dietary supplements, and *not* medical foods.

5 18. Second, Metagenics’s “medical foods” are not designed for
6 administration exclusively through a physician, as the law requires of true medical
7 foods. Rather, Metagenics’s “medical foods” are available to anyone over the
8 internet including through Amazon.com as a matter of company policy. *See, e.g.,*
9 [http://www.amazon.com/Metagenics/b/ref=bl_dp_s_web_3035402011?ie=UTF8&](http://www.amazon.com/Metagenics/b/ref=bl_dp_s_web_3035402011?ie=UTF8&node=3035402011&field-lbr_brands_browse-bin=Metagenics)
10 [node=3035402011&field-lbr_brands_browse-bin=Metagenics](http://www.amazon.com/Metagenics/b/ref=bl_dp_s_web_3035402011?ie=UTF8&node=3035402011&field-lbr_brands_browse-bin=Metagenics) (Metagenics product
11 page).

12 19. Third, and again unlike actual medical foods, Metagenics does not
13 limit sales of its products to those with “limited or impaired capacity to ingest,
14 digest, absorb, or metabolize ordinary foodstuffs or certain nutrients, or who has
15 other special medically determined nutrient requirements, the dietary management
16 of which cannot be achieved by the modification of the normal diet alone.”
17 Metagenics, in short, will sell to anyone as a matter of policy.

18 20. Metagenics’s labeling is also false and misleading because the
19 diseases and conditions for which Metagenics claims its medical foods products
20 treat are diseases and conditions that can be *managed by a normal diet alone*, thus
21 eliminating any legitimate claims that Metagenics’s products are “medical foods.”

22 21. For the above and other reasons, the Food and Drug Administration
23 (FDA) has expressly censured Metagenics for mislabeling its products as “medical
24 foods.”³ The FDA has called Metagenics’s products “misbranded” and their
25 product labels “false and misleading in that the products are labeled and marketed
26 as medical foods but do not meet the statutory definition of a medical food. . . .”
27

28 ³ The federal definition of “medical food” is the same as California’s.

1 California adopted the same definition of “medical food” as that defined by the
2 FDA. Metagenics was instructed by the FDA to take “prompt action to correct the
3 violations.” The FDA, furthermore, has informed Metagenics of its violations on at
4 least two occasions.

5 22. While Metagenics responded by taking the “medical food” label off
6 several of its products, it continued, and continues to this day, to label at least 17
7 different products with the erroneous “medical food” label. Metagenics has never
8 disclosed to its customers that, although it purports to sell “medical foods,” that the
9 FDA has found that Metagenics’s products *do not* meet state and federal criteria for
10 medical foods.

11 23. During the class period, Plaintiff William L. Grivas, Sr. purchased
12 one or more Metagenics “medical foods.” Mr. Grivas did so after being exposed to
13 and relying on Metagenics’s false advertising and designation of their products as
14 “medical foods.” Mr. Grivas lost money and was damaged as a result of
15 Metagenics’s deception.

16 **CLASS ACTION ALLEGATIONS**

17 24. Plaintiff brings this lawsuit on behalf of himself and the
18 proposed Class members under Rule 23(b)(2) and (3) of the Federal Rules of Civil
19 Procedure. The proposed Class consists of:

20 All persons who at any time through the date of class certification
21 purchased Metagenics “medical foods.” Excluded from the Class are
22 Defendant’s officers, directors and employees of Metagenics and those
23 who purchased Metagenics “medical foods” for the purpose of resale.

24 25. Subject to additional information obtained through further
25 investigation and discovery, the foregoing definition of the Class may be expanded
26 or narrowed by amendment or amended complaint. Specifically excluded from the
27 proposed Class are the Defendant, its officers, directors, agents, trustees, parents,
28 children, corporations, trusts, representatives, employees, principals, servants,

1 partners, joint venturers, or entities controlled by the Defendant, and its heirs,
2 successors, assigns, or other persons or entities related to or affiliated with the
3 Defendant and/or its officers and/or directors, or any of them; the Judge assigned to
4 this action, and any member of the Judge's immediate family.

5 26. **Numerosity.** The members of the Class are so numerous that their
6 individual joinder is impracticable. Plaintiff is informed and believes, and on that
7 basis alleges, that the proposed Class contains many thousands of members. The
8 precise number of Class members is unknown to Plaintiff. The true number of Class
9 members is known by the Defendant, however, and thus, may be notified of the
10 pendency of this action by first class mail, electronic mail, and by published notice.

11 27. **Existence and Predominance of Common Questions of Law and**
12 **Fact.** Common questions of law and fact exist as to all members of the Class and
13 predominate over any questions affecting only individual Class members. These
14 common legal and factual questions include, but are not limited to, the following:

15 (a) whether Metagenics's "medical food" line of products meets
16 the statutory definitions of medical foods;

17 (b) whether the claims discussed above are misleading, or
18 reasonably likely to deceive;

19 (c) whether Metagenics's alleged conduct violates public policy;

20 (d) whether the alleged conduct constitutes violations of the laws
21 asserted here;

22 (e) whether Metagenics engaged in false or misleading advertising;

23 (f) whether Plaintiff and Class members have sustained monetary
24 loss and the proper measure of that loss; and/or

25 (g) whether Plaintiff and Class members are entitled to relief.

26 28. **Typicality.** Plaintiff's claims are typical of the claims of the
27 members of the Class in that the Defendant was unjustly enriched as a result of
28 Plaintiff's and the Class' respective purchases of Metagenics "medical foods."

1 29. ***Adequacy of Representation.*** Plaintiff will fairly and adequately
2 protect the interests of the members of the Class. Plaintiff has retained counsel
3 highly experienced in complex consumer class action litigation, and Plaintiff
4 intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic
5 interests to those of the Class.

6 30. ***Superiority.*** A class action is superior to all other available means
7 for the fair and efficient adjudication of this controversy. The damages or other
8 financial detriment suffered by individual Class members is relatively small
9 compared to the burden and expense that would be entailed by individual litigation
10 of their claims against the Defendant. It would thus be virtually impossible for the
11 Class, on an individual basis, to obtain effective redress for the wrongs done to
12 them. Furthermore, even if Class members could afford such individualized
13 litigation, the court system could not. Individualized litigation would create the
14 danger of inconsistent or contradictory judgments arising from the same set of facts.
15 Individualized litigation would also increase the delay and expense to all parties and
16 the court system from the issues raised by this action. By contrast, the class action
17 device provides the benefits of adjudication of these issues in a single proceeding,
18 economies of scale, and comprehensive supervision by a single court, and presents
19 no unusual management difficulties under the circumstances here.

20 31. In the alternative, the Class may also be certified because:

21 (a) the prosecution of separate actions by individual Class
22 members would create a risk of inconsistent or varying adjudication with respect to
23 individual Class members that would establish incompatible standards of conduct
24 for the Defendant;

25 (b) the prosecution of separate actions by individual Class
26 members would create a risk of adjudications with respect to them that would, as a
27 practical matter, be dispositive of the interests of other Class members not parties to
28 the adjudications, or substantially impair or impede their ability to protect their

1 interests; and/or

2 (c) Defendant has acted or refused to act on grounds generally
3 applicable to the Class thereby making appropriate final declaratory relief with
4 respect to the members of the Class as a whole.

5 32. Unless stated otherwise, the claims asserted herein are applicable to
6 all persons who purchased Metagenics “medical foods.”

7 33. Adequate notice can be given to Class members directly using
8 information maintained in Defendant’s records or through notice by publication.

9 34. Damages or restitution may be calculated, in part, from the sales
10 information maintained in Defendant’s records, so that the cost of administering a
11 recovery for the Class can be minimized. However, the precise amount of damages
12 available to Plaintiff and the other members of the Class is not a barrier to class
13 certification.

14 35. Unless a class is certified, Defendant will retain monies received as
15 a result of its conduct that was taken from Plaintiff and proposed Class members.

16 **COUNT I**

17 **Unlawful Business Acts and Practices in Violation of California**
18 **Business & Professions Code Sections 17200, *et seq.*,**
19 **on Behalf of Plaintiff and the Class**

20 36. Plaintiff repeats and re-alleges the allegations contained in the
21 paragraphs above, as if fully set forth here.

22 37. Business & Professions Code § 17200 prohibits any “unlawful,
23 unfair or fraudulent business act or practice and unfair, deceptive, untrue or
24 misleading advertising.” For the reasons discussed above, Metagenics has violated
25 each of these provisions of Business & Professions Code § 17200.

26 38. Metagenics has violated § 17200’s prohibition against engaging in
27 unlawful acts and practices by, *inter alia*, making the representations and omissions
28 of material facts, as set forth more fully here, and violating Civil Code §§ 1572,

1 1573, 1709, 1710, 1711, 1770, Business & Professions Code §§ 17200, *et seq.*, and
2 California's Sherman Food, Drug, and Cosmetic Law (incl. Health & Safety Code
3 §§ 110100, 110765), by misbranding food, Metagenics "medical foods," in
4 violation of state law, and by violating the common law.

5 39. Plaintiff and the Class reserve the right to allege other violations of
6 law which constitute other unlawful business acts or practices. Such conduct is
7 ongoing and continues to this date.

8 40. Metagenics's acts, omissions, misrepresentations, practices, and
9 non-disclosures as alleged here also constitute "unfair" business acts and practices
10 within the meaning of Business & Professions Code §§ 17200, *et seq.* in that its
11 conduct is substantially injurious to consumers, offends public policy, and is
12 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct
13 outweighs any alleged benefits attributable to such conduct.

14 41. As stated in this Complaint, Plaintiff alleges violations of consumer
15 protection, unfair competition, and truth in advertising laws in California and other
16 states resulting in harm to consumers. Plaintiff asserts violations of the public
17 policy of engaging in false and misleading advertising, unfair competition, and
18 deceptive conduct towards consumers. This conduct constitutes violations of the
19 unfair prong of Business & Professions Code §§ 17200, *et seq.*

20 42. There were reasonably available alternatives to further Metagenics's
21 legitimate business interests, other than the conduct described here.

22 43. Metagenics's claims, nondisclosures and misleading statements, as
23 more fully set forth above, were also false, misleading, and/or likely to deceive
24 the consuming public within the meaning of Business & Professions Code
25 § 17200.

26 44. Metagenics's labeling, website and other advertisements, as
27 described herein, also constitutes unfair, deceptive, untrue, and misleading
28 advertising.

1 45. Metagenics's conduct caused and continues to cause substantial
2 injury to Plaintiff and the other Class members. Plaintiff has suffered injury in fact
3 and has lost money as a result of Metagenics's unfair conduct.

4 46. Metagenics has thus engaged in unlawful, unfair, and fraudulent
5 business acts and practices and false advertising, entitling Plaintiff to judgment and
6 equitable relief against Defendants, as set forth in the Prayer for Relief.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for a judgment:

9 A. Certifying the Class as requested here;

10 B. Awarding restitution and/or disgorgement of Metagenics's revenues
11 to Plaintiff and the proposed Class members, and any other equitable relief afforded
12 by the Business and Professions Code;

13 C. Awarding attorneys' fees and costs; and

14 D. Providing such further relief as may be just and proper.

15 **JURY DEMAND**

16 Plaintiff demands a trial by jury on all issues so triable.

17 DATED: November 9, 2015

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